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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

No. 826

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiffs and Appellees,
vs.
RAYMOND CAINE,
Defendant and Appellant.

Appeal—Criminal

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

STATEMENT AS TO JURISDICTION.

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No.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Plaintiffs and Appellees,* vs. RAYMOND CAINÉ, *Defendant and Appellant.*	Appeal— Criminal

Appeal from the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

STATEMENT AS TO JURISDICTION.

The appellant, pursuant to United States Supreme Court rules 13 (2) and 15, files this his statement of the basis on which it is contended that the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgment of conviction in question and should exercise such jurisdiction in this case.

1. OPINION BELOW.

No opinions were delivered in the Courts below.

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2. JURISDICTION.

The appeal herein is from a final judgment of conviction made and entered by the Appellate Department of the Superior Court of the State of California in and for the County of San Mateo, the highest Court of the State of California in which decision could be had.

The grounds upon which jurisdiction of the Supreme Court of the United States is invoked are:

That the ordinance described in the complaint as applied to defendant, deprives him of his liberty and property without due process of law in violation of Sec. 1 of the Fourteenth Amendment to the Constitution of the United States, and that said ordinance, as applied to defendant, denies to him the equal protection of the laws, in violation of said Section 1 of the Fourteenth Amendment to the Constitution of the United States.

This is a criminal action commenced in the Municipal Court of the Southern Judicial District of the County of San Mateo, State of California, in which appellant, Raymond Caine, was charged with the crime of misdemeanor, to wit, an alleged violation of Section 105 of Ordinance No. 758 of the City of Redwood City in that he did operate a truck having a gross weight in excess of 3 tons on a street in the City

of Redwood City which street was not a truck route as designated in said Section 105 of said ordinance. Said Section 105 is set forth verbatim in an appendix hereto.

Defendant when arrested had driven his truck from a quarry situated on the county road of Edgewood Road distant 1.7 miles east of the western city limits of Redwood City. When he reached said city limits, he crossed the city line and entered Redwood City. He was immediately arrested and charged with a violation of said Section 105 of the Ordinance which made it unlawful for his truck to enter the city limits.

After a trial, defendant was convicted and sentenced to pay a fine of $27.00 and in lieu thereof be confined in the San Mateo County Jail for a period of one day for each $5.00 of said fine.

On August 16, 1957 a stipulation as to certain facts was filed in the Municipal Court. This stipulation is in part as follows:

> "That on June 11, 1957 defendant Caine drove a Dodge dump truck license No. 51591 from the Whipple Quarry located on the county road of Edgewood Road in the unincorporated area of San Mateo County 1.7 miles east of the city limits of Redwood City in an easterly direction on Edgewood Road to a point within the city limits of Redwood City at the intersection of Edgewood Road and Alameda de las Pulgas at which point he was arrested by officer Elkington of the Redwood City Police Department."

The defendant was hauling the rock to the corner of Main and Bradford Streets in Redwood City. This

point is marked on the map (Rep.Tr. p. 11, line 7, and Rep.Tr. p. 28, line 21).

The date of the judgment sought to be reviewed is December 31, 1957. Said judgment became final January 8, 1958. The date notice of appeal was filed is January 9, 1958 and the Court in which it is filed is the Appellate Department of the Superior Court of the State of California, in and for the County of San Mateo.

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3. STATUTORY PROVISION CONFERRING JURISDICTION OF THIS APPEAL ON THE SUPREME COURT OF THE UNITED STATES.

Section 1257 (2) title 28 United States Code, the material part of which is as follows:

> Sec. 1257. **State courts, appeal; certiorari.** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

In the instant case there was drawn in question the validity of said ordinance on the ground of its being repugnant to the Constitution of the United States and the decision is in favor of its validity.

4. DECISIONS AUTHORIZING JURISDICTION.

The following decisions are believed to authorize the jurisdiction of the United States Supreme Court in this case:

The Home Insurance Company of New York v. The City Council of the City of Augusta, Georgia (1876), 8 Otto 116; 23 Law Ed. 825;
Eubank v. City of Richmond (1912), 226 U.S. 137.

Both of these cases involved city ordinances alleged to violate the Fourteenth Amendment to the Constitution.

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5. THE STATE STATUTE (ORDINANCE) THE VALIDITY OF WHICH IS INVOLVED.

Such statute is Section 105 of Ordinance No. 758 of the City of Redwood City which section is set out in an appendix to this jurisdictional statement.

A map of Redwood City and the surrounding territory is a part of the record on this appeal. It was introduced in evidence as Defendant's Exhibit No. 1. The city limits of Redwood City are colored pink on this map. The remainder of the map shows unincorporated territory of San Mateo County and also portions of the cities of Woodside and San Carlos.

As it is not practical to make the map a part of this jurisdictional statement appellant incorporates herein a statement as to what is shown by said map so as to explain the Ordinance.

Redwood City lies on both sides of El Camino Real, a state highway which runs from San Francisco to Los Angeles. It runs through Redwood City from north to south. Another state highway, Bay Shore Highway, runs through the easterly portion of Redwood City and parallels El Camino Real. From the Bay Shore state highway another state highway known as Woodside Road runs southerly through Redwood City from Bay Shore Highway to El Camino Real, a distance of about a mile, where it crosses El Camino Real and proceeds in a southerly direction about two miles to the city limits of Woodside and thence through Woodside to the City of Santa Cruz on the Pacific Ocean.

The ordinance prohibits trucks of a gross weight in excess of 3 tons either to enter or to leave the city at any point on its western or its southern border except on Woodside Road, a state highway. The city has no power to reduce the weight of trucks on any state highway (Vehicle Code of California, sec. 713). The ordinance designates no truck route west of El Camino Real. No street from the west which intersects El Camino Real is designated as a truck route.

Not including the state highway of Woodside Road (which runs south from El Camino Real) there are 24 city streets which run west from the state highway of El Camino Real. Five of these streets viz. Edgewood Road, Whipple Avenue, Hopkins Avenue, Brewster Avenue, and Jefferson Street run to the western city limits and there connect with county roads ex-

tending westerly into the unincorporated area of San Mateo County. These are all through roads and are county roads from the city limits west.

The ordinance forbids any truck the gross weight of which exceeds 3 tons to pass through Redwood City from El Camino Real in order to reach any of the county roads which reach the western city limits and also forbids all such trucks to enter the western city limits at the points where the above mentioned county roads reach the western city limits. This prohibition applies to trucks which reach the western city limits at the point where the county road of Edgewood Road reaches said city limits. This prohibition applies also to trucks traveling from the east which seek to enter the county road of Edgewood Road at the city limits.

The ordinance, therefore, forbids trucks of over 3 tons gross weight either to enter or to leave the city at any point where county roads from the west reach the city limits.

The quarry from which defendant was hauling his rock is on the county road of Edgewood Road 1.7 miles west of the city limits. This county road extends in a general westerly and northwesterly direction from Redwood City on San Francisco Bay to Half Moon Bay on the Pacific Ocean. That portion of the County Road of Edgewood Road from Redwood City to Canada Road has been in existence for over 100 years. Canada Road parallels the state highway of El Camino Real.

6. QUESTIONS PRESENTED ON APPEAL.

1. Does the ordinance here involved under which defendant was convicted deny to him the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment?

Defendant is denied the right to enter the city limits of Redwood City at the point where the county road of Edgewood Road reaches the city limits, or to use any city street connecting with the county road of Edgewood Road; but trucks of other persons not entering the city at that point are permitted by the ordinance to use the city streets connecting with the county road of Edgewood Road. Defendant when traveling from Redwood City to the quarry, which is 1.7 miles west of Redwood City, is denied the right to use any city street to reach the county road of Edgewood Road; but trucks of other persons are permitted to use such city streets if they do not leave the city at the point where the county road of Edgewood Road reaches the western city limits. All such trucks have the same effect upon the streets of Redwood City and upon the inhabitants of the city and there is no valid reason for such discrimination.

2. Does the ordinance as applied to defendant deprive him of his liberty and property without due process of law in violation of Section 1 of the Fourteenth Amendment?

Defendant maintains that the ordinance as applied to him is arbitrary, unreasonable and capricious, for the following reasons:

(a) It specifies no alternate route which defendant might use.

(b) It was argued that defendant could travel west instead of east from the quarry to Canada Road; thence to the city of Woodside and from Woodside via the State Highway of Woodside Road to the State Highway of El Camino Real and thence to the point where the State Highway is intersected by the city street of Edgewood Road a distance of 11.45 miles, as against a distance of 2.7 miles through Redwood City via the city street of Edgewood Road.

(c) The route via Woodside crosses a hill, the elevation of which is 549 feet above sea level. The road over the hill is curved and has a maximum grade of 7.15 per cent. The elevation of the quarry is 239 feet above sea level and the elevation of the point where the city street of Edgewood Road intersects the State Highway of El Camino Real is 17 feet above sea level.

(d) The cost of hauling rock via the Woodside route is $1.00 per ton, whereas the cost of hauling through the City of Redwood City is 35 cents per ton.

(e) The route via Woodside lies mainly outside of the city limits of Redwood City and passes through another city, viz. Woodside. The burdens and hazards of traffic which normally passes through 1.10 miles of a city street of Redwood City are thrown upon many miles of county roads, city streets of the City of Woodside and the state highways of Woodside Road and El Camino Real. Defendant, if he traveled over

such route, would be subject to such greatly increased hazards.

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7. STATEMENT OF THE CASE.

The appellant was convicted of the crime of misdemeanor, to wit, a violation of Section 105 of said Ordinance No. 758 and was sentenced to pay a fine of $27.00 (including a $2.00 state assessment) and in lieu thereof be confined in the San Mateo County Jail for a period of one day for each $5.00 of said fine.

Appellant demurred to the complaint in the Municipal Court on the following grounds viz:

(a) That the ordinance pleaded in the complaint is void as to the defendant because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it denies to the defendant the equal protection of the laws as set forth in the Points and Authorities annexed to the demurrer and made a part thereof.

(b) That the ordinance pleaded in the complaint is, as to defendant, void because it violates Section 1 of the Fourteenth Amendment to the Constitution of the United States, in that it deprives defendant of his liberty and property without due process of law, as set forth in the Points and Authorities hereunto annexed and made a part of this demurrer.

The Points and Authorities attached to said demurrer are in part as follows:

(a) Denial of equal protection of the laws.

It will be seen from an inspection of the ordinance that defendant is unlawfully discriminated against in the following particulars, viz:

(1) Defendant traveling on the county road of Edgewood Road is forbidden to cross the city line in order to reach a construction job in the city, but trucks of other persons whose place of business is on any street in Redwood City can operate their trucks on the city street of Edgewood Road or on any other street west of the state highway of El Camino Real to reach a construction job in the city.

(2) A person hauling from a point on the city street of Edgewood Road immediately inside the city line can use the city street of Edgewood Road to reach the state highway or any other point in Redwood City, but because defendant is hauling from a point situated outside of the city, he is denied the use of Edgewood Road or any other city street connecting with the county road of Edgewood Road.

Defendant who was lawfully traveling on the county road of Edgewood Road to the city limits of Redwood City is forbidden to pass through the city to the state highway and is also forbidden to enter the city for the purpose of delivering merchandise to a point in the city, but trucks of other persons who wish to transport goods from any point in the city to the point where Edgewood Road reaches the city limits are permitted to use Edgewood Road to that point or to any other point on Edgewood Road, or to any other point in the city.'

If after delivering his load in the city limits defendant wished to return to the quarry, he is denied the use of the city street of Edgewood Road, or any other city street, to reach the county road of Edgewood Road, whereas trucks of other persons who do not wish to pass beyond the city limits are permitted to use the entire length of the city street of Edgewood Road.

The discrimination above described is shown by Subdivisions (C) and (D) of Section 105 of the ordinance, which are as follows:

(C) *Truck Traffic in the City: Outside Origin:*

1. *Outside Destination.* All trucks entering the City for a destination point outside the City shall operate only over a truck route as hereinbefore established.

2. *One Inside Destination Point.* All trucks entering the City for a destination point in the City shall enter the City only on an established truck route and shall proceed only over an established truck route and shall deviate only at the intersection with the street nearest to the destination point. Upon leaving the destination point the deviating truck shall return to the nearest truck route by the shortest route.

3. *Multiple Inside Destination Points.* All trucks entering the City for multiple destination points shall enter the City only on established truck routes, shall proceed only over established truck routes and shall deviate only at the intersection with the street nearest to the first destination point. Upon leaving the first destination point a deviating truck shall proceed to all other

destination points by the shortest route. Upon leaving the last destination point the deviating truck shall return to the nearest truck route by the shortest route.

(D) *Truck Traffic in the City: Inside Origin:*

1. *Outside Destination Point.* All trucks on a trip originating in the City and traveling in the City for a destination point outside the City shall proceedeby the shortest route to the nearest truck route as herein established.

2. *Inside Destination Points.* All trucks on a trip originating in the City and traveling in the City for destination points in the City shall proceed to such destination points by the shortest route.

The ordinance clearly discriminates against trucks engaged in through traffic or entering Redwood City from the outside.

It is obvious that there is no valid basis for such discrimination. The truck of defendant and the trucks of such other persons have the same effect upon the streets of Redwood City and the inhabitants of that City.

The Supreme Court of Ohio in *Richter Concrete Corporation v. City of Reading* (1956), 136 N.E. 2d 422, *held discriminatory and unconstitutional* an ordinance of Reading *similar in all respects to the Redwood City ordinance here involved.*

In the above cited case the material part of the Reading ordinance was as follows:

"Section 1: That it shall be unlawful for any person, partnership, firm or corporation to operate any vehicle or vehicles within the boundaries of the City of Reading, Ohio, containing a gross weight, including load, in excess of 20,000 pounds, *excepting for the purpose of loading or unloading said vehicles at a residence, place of business or industry within the boundaries of the City of Reading, Ohio,* which shall include ordinary deliveries to any of such places, and *excepting also for the purpose of traveling to or from a residence, place of business or industry where said vehicle or vehicles are registered or hired and excepting also for the operation of vehicles over Reading Road, a state highway.*

"Provided further, that the gross weight, including load of any vehicle or vehicles, shall include the gross weight of any trailer or trailers attached to any vehicle or vehicles, together with load."

The Ohio Supreme Court in its opinion (p. 424 of 136 N.E.) said:

"Adding these exceptions together, it is found that the restricting provision is made to apply to all instances *excepting to vehicular travel having one or the other terminus within the territorial limits of the City of Reading,* excepting travel on Reading Road, a state highway. *In other words, all through travel excepting on Reading Road, is penalized if the vehicle weighs more than 20,000 pounds, whereas transportation having its beginning or ending, or both within the City of Reading is left free regardless of the weight of the vehicle. In other words, the ordinance, with its*

restrictions and penalty, is made to apply solely to through traffic."

The Court at page 425 further said:

"The objection to this ordinance is that it imposes restrictions or penalties on those using the streets engaged in through traffic, and imposes no such regulation upon those using the streets for other than through traffic, notwithstanding such traffic imposes the same stress upon the streets and creates the same hazards. It is, therefore, assailed as a purely arbitrary classification.

We have been furnished no basis for this distinction between through traffic and other traffic —and can think of none.

That the mere fact of traffic having its termini outside of the municipality is not a valid basis of classification is clear."

In *McLeaish v. Binford* (1931), 52 Fed. (2d) 151, a three-judge Federal Court, convened pursuant to the Act of Congress, said:

"Wide as the power of the Legislature is, we have no manner of doubt that, if it *arbitrarily interferes* with the right of one of the public to haul his goods over it, whether the hauling is done for himself or for hire for others, *that one may be, as he has uniformly been, accorded relief in the national courts."*

In the case last cited, the Court had under consideration a Texas statute limiting the weight of loads. The statute there held unconstitutional limited the weight of loads and *also the number of packages per*

load. It was this latter portion of the statute (which the Court held to be discriminatory), which entitled the plaintiff to an injunction against the enforcement of the statute. The Court held that there was no reasonable basis for discrimination between a load containing a specified number of packages and a load containing a greater number.

This decision was affirmed by the Supreme Court in *T. Binford v. McLeaish* (1932), 284 U.S. 598.

(b) The ordinance as applied to defendant is arbitrary, unreasonable and capricious and violates the due process clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

As to defendant due process of law is denied for the following reasons:

1. The ordinance does not specify an alternate route through the city over which defendant could operate his truck, and is for that reason arbitrary and capricious.

The Courts of this country have uniformly held that a city cannot close a street to through traffic unless it designates an alternate route *through the city.*

Associated Transport v. City of Syracuse, 196 Misc. 1091, 93 N.Y.S. (2d) 423 (Appeal dismissed 1951) 107 N.Y.S. (2d) 565;

Garneau v. Eggers (1934), 133 N.J.L. 247, 174 Atl. 250;

Western Auto Transports v. City of Cheyenne (1942), 57 Wyo. 351, 120 Pac.(2d) 598;

Blumenthal v. City of Cheyenne (1947), 64 Wyo. 75, 186 Pac.(2d) 556, 561; also at page 590;

City of Arlington v. Lillard (1927), 116 Texas 446, 294 S.W. 829;

Commonwealth v. Kennedy (1937), 129 Pa. Super. 149, 195 Atl. 770; see also pages 773-774.

In the last cited case the Court said:

> *"where other reasonably convenient routes in the city are available* to the traffic thus excluded in the interest of the public safety and welfare the latter has no just cause for complaint."

See also Opinion of the Attorney General of New York referred to in the Opinion in *Associated Transport v. City of Syracuse, supra.* In his Opinion the Attorney General said:

> "that under Section 90 of the Vehicle and Traffic law a municipality might lawfully designate highways from which heavy trucks should be excluded *but in such case the village had the duty to provide an alternate route which was adequate, safe and suitable* for otherwise it would be within the power of the village to bar such traffic entirely."

Additional grounds showing that the ordinance as applied to appellant is arbitrary, unreasonable and capricious, were shown at the trial where the following stipulations were made by counsel for the respective parties:

Mr. Costello. Your Honor, we will stipulate at this time to the following facts, reserving our objection to their admissibility. The map presently on file in the clerk's office of this Court sets forth the situation.

The city limits are shown by the part which is colored pink. The location of the quarry mentioned in the stipulation is marked with a red X on the map.

Mr. Harwood. On this map it is marked with a black X.

The Court. And I believe initialed A.J.H. No. 2.

Mr. Costello. That is correct Your Honor. Between said quarry and Canada Road, the county road, Edgewood Road crosses a hill, the elevation of which at the summit is 549 feet above sea level. The said road over said hill is curved and has a maximum grade of 7.15 per cent. The elevation of the quarry is 239 feet above sea level and the elevation of the point where city street of Edgewood Road intersects State Highway El Camino is 17 feet above sea level. It is substantially down grade from said quarry to said highway. The Town of Woodside is incorporated and the northern boundary thereof is shown by a black line initialed A.J.H. No. 1 on the above mentioned map presently on file in the Court, which said city limits line of Woodside crosses Canada Road. Woodside Road as shown upon the map is a state highway running westerly (should be southerly) from the above-mentioned state highway of El Camino to the westerly (should be southerly) limits of Redwood City and from thence westerly (should be southerly) through the unincorporated area of the County of San Mateo and through the town of Woodside. Said Woodside Road is a permissible truck route. I would like to include this addition: Said Woodside Road runs in an east-west (should be south-north) direction and is open to trucks of any weight. From the quarry

entrance mentioned in the stipulation on file running easterly on Edgewood Road to the city limits of Redwood City is a distance of 1.6 miles and from there to El Camino is 1.35 miles. From the above mentioned quarry proceeding westerly on Edgewood to its intersection with Canada Road is 1.5 miles. From the intersection of Canada and Edgewood proceeding southerly on Canada Road to its intersection with Woodside Road is 3.6 miles. From the intersection of Canada Road and Woodside Road proceeding easterly to its intersection with El Camino Real a distance of four miles. (The word "easterly" in last sentence should be "northerly" as is shown by map.) From the intersection of Woodside Road and El Camino Real traveling northerly on El Camino to the intersection of Edgewood Road and El Camino is 1.35 miles. It is 2.7 miles from the above mentioned quarry by the most direct route as against 8.9 miles the other way; the difference is 6.25 miles. (Due to an error in addition Mr. Costello stated that the distance is 8.9 miles the other way and that the difference is 6.25 miles. These figures should be 10.45 miles, the difference being 7.75 miles.) (Rep.Tr. pp. 19-21.)

That the cost of hauling rock from said quarry to said construction job, if hauled through the city street of Edgewood Road from the point where the county road of Edgewood Road reaches the western city limits, is 35 cents per ton, whereas the cost is $1.00 per ton if hauled via the City of Woodside.

The alleged "alternate" route is mainly outside the city limits of Redwood City through many miles of

unincorporated territory and also through another city viz. the City of Woodside. The ordinance throws the burden of traffic which normally passes through 1.10 miles of a Redwood City street upon many miles of county roads lying outside of the city limits and upon about two miles of a city street of Woodside and upon the state highways of Woodside Road and the state highway of El Camino Real. Instead of 1.10 miles of one city street being subject to wear and tear such wear and tear is spread over many miles of roads and streets outside of Redwood City. The hazards of traffic are increased more than threefold. Not only are such hazards increased by the greater length of the road and the greater amount of time the trucks are operating on the road via Woodside but such hazards are also increased by a curved road over a high hill.

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8. STAGE OF PROCEEDINGS AT WHICH FEDERAL QUESTIONS RAISED.

The stage of the proceedings in the Municipal Court (the Court of first instance) at which the questions sought to be reviewed were raised are as follows: Said questions were first raised by defendant's demurrer to the complaint and were also raised by the notice of appeal to the Appellate Department of the Superior Court; that the method of raising said questions and the way on which they were passed upon are as follows:

Defendant demurred to the complaint on the following grounds, viz:

(a) That the ordinance pleaded in the complaint is void as to defendant because it violates Section 1 of the Fourteenth Amendment to the Constitution in that it denies to defendant the equal protection of the laws.

(b) That the ordinance pleaded in the complaint is void as to defendant because it violates Section 1 of the Fourteenth Amendment in that it deprives defendant of his liberty and property without due process of law as set forth in the Points and Authorities annexed to and made a part of the demurrer.

The Municipal Court overruled defendant's demurrer and found the defendant guilty of the crime charged in the complaint and the Appellate Department of the Superior Court affirmed the judgment of the Municipal Court.

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9. FEDERAL QUESTIONS ARE SUBSTANTIAL.

It is submitted that the federal questions here involved are obviously substantial, as they involve the denial to appellant of the equal protection of the laws and the deprivation of his liberty and property without due process of law.

In *Pierre v. Louisiana,* 306 U.S. 354, 358, the Supreme Court said:

> "Equal protection to all is the basic principle on which justice under the law rests."

In *Zucht v. King,* 260 U.S. 174, 176, referred to in Rule 15 the appellant contended that her rights under

the Fourteenth Amendment were violated by the manner of the enforcement of an ordinance requiring school children to be vaccinated. The ordinance conferred broad discretion on the health authorities as to when and how the ordinance should be enforced. The Supreme Court called attention to the fact that in numerous prior decisions of the Court the validity of such legislation had been decided and that no showing was made by appellant that her case was not governed by such prior decisions.

In *Zucht v. King, supra,* this Court said:

> "The charge is of an unconstitutional exercise of authority under an ordinance *which is valid.*" (Emphasis added.)

The Supreme Court held that in such a case certiorari and not appeal was the proper method of review.

In the instant case the ordinance as applied to appellant is *invalid.*

In *Zucht v. King, supra,* the case did not come under subdivision (2) of Section 1257 for in *Zucht v. King* no question as to the validity of the ordinance was involved it being merely alleged that the method of its enforcement violated the Constitution, in which case certiorari and not appeal is the proper method of review.

This Court has in effect held in *T. Binford v. McLeaish* (1932), 284 U.S. 598 (affirming *McLeaish v. Binford* (1931), 52 Fed. 2d 151) that appellant herein

has been, by the ordinance here involved, denied the equal protection of the laws.

As to due process of law, it is obvious that the ordinance as applied to appellant is unreasonable, arbitrary and capricious.

When an ordinance is claimed to be unreasonable the rule of law to be applied in determining the question of reasonableness is whether or not there is a debatable question as to the reasonableness of the ordinance.

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10. COPY OF JUDGMENT APPEALED FROM.

Appellate Department of the Superior Court in and for the County of San Mateo, State of California.

No. AD-61. The People vs. Raymond Caine

On the appeal from judgment of the Municipal Court, Southern Judicial District, submitted in the above entitled action, the Court has this day rendered the following decision: judgment affirmed. It is ordered that the remittitur not be sent to the Municipal Court until 10 days after this affirmance is entered.

A. R. Cotton, P.J.
Edmund Scott, J.
Louis B. Dematteis, J.

(Dated Dec. 31, 1957.)

Said judgment became final on January 8, 1958. Under Rule 7 Revised Appellate Department Rules adopted pursuant to statute by the Judicial Council of the State of California a Judgment of the Appellate Department becomes final upon the expiration of 7 days after the same has been pronounced.

Dated, February 24, 1958.

Respectfully submitted,

A. NOBLE MCCARTNEY,

Attorney for Appellant.

GEORGE H. ECKHARDT, JR.,

ALFRED J. HARWOOD,

Of Counsel.

(Appendix Follows.)

Appendix

ORDINANCE NO. 781

AMENDING TRAFFIC ORDINANCE TO PROVIDE FOR TRUCK ROUTES AND WEIGHT LIMITS ON CERTAIN STREETS IN THE CITY OF REDWOOD CITY.

The Council of Redwood City do Ordain as Follows:

Section 1. Ordinance No. 758, passed and adopted by the Council of Redwood City on February 1, 1954, being the Traffic Ordinance of the City of Redwood City, is hereby amended by adding thereto a new section numbered 105, as follows:

Sec. 105. *Truck routes:* (A) The following streets are hereby declared to be truck traffic routes for the movement of vehicles exceeding a maximum gross weight of three (3) tons hereinafter called "trucks," and the City Manager is hereby authorized and directed to designate such streets by appropriate signs as "Truck Route." Said streets are specifically designated as follows:

1. All of El Camino Real within the corporate limits of Redwood City.

2. All of Bayshore Highway within the corporate limits of Redwood City.

3. All of Main Street within the corporate limits of Redwood City.

4. All of Stafford Street within the corporate limits of Redwood City.

5. All of Industrial Way within the corporate limits of Redwood City.

6. All of Woodside Road within the corporate limits of Redwood City.

7. All of Spruce Street within the corporate limits of Redwood City.

8. All of Harbor Boulevard within the corporate limits of Redwood City.

9. All of Jefferson Avenue between El Camino Real and Pennsylvania Avenue.

10. All of Maple Street between El Camino Real and Main Street.

11. All of Chestnut Street between Main Street and Bayshore Highway.

12. All of Middlefield Road southerly of Main Street.

13. All of Spring Street between Chestnut Street and Douglas Avenue.

14. All of Bay Road from Chestnut Street to Second Avenue.

15. All of Broadway from Chestnut Street to Fifth Avenue.

16. All of Charter Street from Spring Street to Bayshore Highway.

17. All of Fifth Avenue between Broadway and Bayshore Highway.

18. All of Second Avenue from Bay Road to Broadway.

19. All of Douglas Avenue between Bay Road and Broadway and all of Douglas Avenue northerly from Broadway.

(B) No person, firm or corporation shall operate any truck having a gross weight in excess of three (3) tons on any street in the City of Redwood City except on those streets specified in Section 105 (A) hereof and subject to the exceptions hereinafter provided. For the purposes of this ordinance the word "Truck" shall include the words "truck and trailer" or any combination thereof as defined in Section 152 hereof and any commercial vehicle as defined in the Vehicle Code of the State of California.

(C) *Truck Traffic in the City: Outside Origin:*

1. *Outside Destination.* All trucks entering the City for a destination point outside the City shall operate only over a truck route as hereinbefore established.

2. *One Inside Destination Point.* All trucks entering the City for a destination point in the City shall enter the City only on an established truck route and shall proceed only over an established truck route and shall deviate only at the intersection with the street nearest to the destination point. Upon leaving the destination point the deviating truck shall return to the nearest truck route by the shortest route.

3. *Multiple Inside Destination Points.* All trucks entering the City for multiple destination points shall enter the City only on established truck routes, shall proceed only over established truck routes and shall deviate only at the intersection with the street nearest to the first destination point. Upon leaving the first destination point a deviating truck shall proceed to all other destination points by the shortest route. Upon leaving the last destination point the deviating

truck shall return to the nearest truck route by the shortest route.

(D) *Truck Traffic in the City; Inside Origin:*

1. *Outside Destination Point.* All trucks on a trip originating in the City and traveling in the City for a destination point outside the City shall proceed by the shortest route to the nearest truck route as herein established.

2. *Inside Destination Points.* All trucks on a trip originating in the City and traveling in the City for destination points in the City shall proceed to such destination points by the shortest route.

(E) Any police officer shall have the authority to require any person driving or in control of any truck on any public street or highway in the City of Redwood City to proceed to any public or private scale available for the purpose of weighing and determining whether this section has been complied with.

(F) Nothing in this section shall be construed as applying to any truck coming from an unrestricted street having ingress and egress by direct route to and from streets on which truck traffic is restricted as herein provided when necessary for the purpose of making pickups or deliveries of goods, wares and merchandise from or to any building or structure located on streets other than truck routes or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling or construction of any building or structure upon a street other than a truck route for which a building permit has

previously been obtained, or to any vehicle owned by a public utility while necessarily in use in the construction, installation or repair of any public utility, or to any vehicle which is subject to the provisions of Section 50 and ¼ of the Public Utilities Act, or to any vehicle owned or operated by the City of Redwood City while engaged in the repair, maintenance or construction of streets, street improvements or street utilities.

Section 2. This ordinance shall cease to be effective as to any State highways within six (6) months after the receipt of notice from the Department of Public Works of the State of California of its withdrawal of its consent to the establishment of any restrictions affecting State highways herein.

Section 3. If any section, sentence, clause or phrase of this ordinance is for any reason held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance and the Council of the City of Redwood City hereby declares that it would have passed this ordinance and each section, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, sentences, clauses or phrases be declared invalid.

Section 4. This ordinance shall be effective thirty (30) days after its adoption.

Passed and adopted by the Council of the City of Redwood City at a regular meeting thereof held on the 15th day of November, 1954.

Ordinance #781